


| PRE-APPEAL BRIEF REQUEST FOR REVIEW | | Docket Number (Optional) U03-0031.45 |
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| | Application Number | Filed |
| | 10/605,172 | September 12, 2003 |
| | First Named Inventor | |
| | Ivan N. Wakefield | |
| | Art Unit 2622 | Examiner Tuan H. Le |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"><div style="width: 45%;"><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.7.1. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>42,282</u></p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></div><div style="width: 50%; text-align: center;"><div style="margin-bottom: 10px;"> _____ Signature</div><div style="margin-bottom: 10px;">Frederick D. Bailey _____ Typed or printed name</div><div style="margin-bottom: 10px;">919-286-8000 _____ Telephone number</div><div>November 30, 2007 _____ Date</div></div></div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> | | |

☒ *Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re application of: Ivan N. Wakefield |) | |
| |) | |
| Application No.: 10/605,172 |) | Group Art Unit: 2622 |
| |) | |
| Filed: September 12, 2003 |) | Examiner: Tuan H. Le |
| |) | |
| Title: METHOD AND DEVICE FOR |) | |
| COMMUNICATION USING AN |) | |
| OPTICAL SENSOR |) | |
| |) | |

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant submits that the Office Action issued by the Examiner in the present application contain clear errors in the Examiner's rejections of claims 1-3, 5, 7-25, 32-42 and 48-54, pending in this application.

In the Office Action claims 1-3, 5, 7-25, 32-42 and 48-54 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0076408 (Dutta). Applicant submits that the Examiner has committed clear error in rejecting the claims of the present application as being unpatentable over Dutta.

Response to Arguments

In the Advisory Action dated November 7, 2007, in response to Applicant's arguments, the Examiner states that Applicant's amendment will be entered for purposes of Appeal but does not place the application in condition for allowance. The Examiner then asserts that Dutta discloses identifying a class of data in an image being telephone number of internet address, and each of the classes of data having an associated predetermined function being telephone number or internet address. The Examiner commits clear error as the Examiner asserts that the class of data and the

function are one and the same. Further, the Examiner asserts that a bar code disclosed in Dutta is data unintelligible to the human eye, as recited in the claims of the present application. The Examiner commits clear error

35 U.S.C. § 102 Rejections

Regarding claims 1, 17, 32 and 48, Applicant submits that Dutta does not disclose or suggest the limitations in the combination of each of these claims of, *inter alia*, identifying a plurality of possible classes of data in the image, the processor identifying a class of data in the image of the plurality of classes of data and performing a predetermined function associated with the class of data in response to the class of data being identified in the image, each of the plurality of possible classes of data having an associated predetermined function. The Examiner asserts that Dutta discloses these limitations in Figure 3 and paragraph 23. However, these portions merely disclose a block diagram of the hand-held device of Dutta, and details of Figure 4 which shows a process for capturing multiple images of an object from moving a camera, and using information gathered related to the detected motion and/or brightness of the obtained image to process the various images to reconstruct an entire image of the object based on the previously acquired and processed images. This is not identifying a plurality of possible classes of data in the image, as recited in the claims of the present application. Dutta merely discloses taking multiple images of an object and processing these multiple images to reconstruct an object in the image. This is not identifying classes of data in an image. The Examiner commits clear error.

Further, these portions of Dutta do not disclose or suggest performing a predetermined function associated with the class of data in response to the class of data being identified in the image, as recited in the claims of the present application. Dutta does not disclose or suggest performing a predetermined function. Further, Dutta does not disclose or suggest each of the plurality of the possible classes of data having an associated predetermined function. As has been noted, Dutta merely relates to taking multiple images of an object and processing these multiple images to reconstruct an image of the object. The Examiner commits clear error.

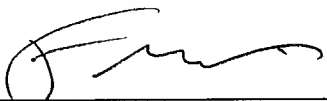
Moreover, Applicant submits that Dutta does not disclose or suggest the limitations in the combination of each of claims 1, 17, 32 and 48 of, *inter alia*, wherein the plurality of possible classes of data comprise data visible to a human eye and data unintelligible to a human eye. The Examiner asserts that these limitations are disclosed in Dutta in Figure 3 and paragraph 25. However, these portions merely disclose that the object may comprise information presented on a two-dimensional substantially planer surface such as numbers, words, text, a drawing, a bar code, etc. This is not a plurality of possible classes of data that comprise data visible to a human eye and data unintelligible to a human eye, as recited in the claims of the present application. Dutta does not disclose or suggest wherein a plurality of possible classes of data comprise data unintelligible to a human eye. The Examiner commits clear error.

Regarding claims 2, 3, 5, 7-16, 18-25, 33-42 and 49-54, Applicant submits that these claims are dependent on one of independent claims 1, 17, 32 and 48 and, therefore, are patentable at least for the same reasons noted previously regarding these independent claims.

Accordingly, Applicant submits that Dutta does not disclose or suggest the limitations in the combination of each of the claims of the present invention. The Examiner has committed clear error in making his rejections. Accordingly, as the Examiner's rejections have been shown to be in clear error and lack essential elements of a rejection as required under 35 U.S.C. §102 and related case law, for the reasons stated above, Applicant respectfully requests that the rejections of Applicant's claims in the present application be withdrawn and that these claims be allowed to issue.

Respectfully submitted,

Date: November 30, 2007



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